

DARIUS MOSTOWFI, et al, No C-03-5784 VRW  
Plaintiffs, ORDER  
v  
I2 TELECOM INTERNATIONAL INC, et  
al,  
Defendants.

Rube Goldberg would be proud of the pleading at bar, a second amended complaint (SAC) that alleges orchestration of an unlawful scheme to deprive plaintiffs of control over their intellectual property and their company, SuperCaller Community, Inc ("SuperCaller"). The SAC contains three federal claims and numerous state law claims. A reader of the SAC could well appreciate the undersigned confining himself to these federal claims for if these claims fail, the state claims may be able to proceed, but in state court, not here.

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## I

On a motion to dismiss, "[a]ll allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." Fresher v Shell Oil Co, 846 F2d 45, 46 (9th Cir 1988). Accordingly, what follows is drawn from the SAC, taking its allegations as true.

The causes of action in this case, while premised on a lengthy and complex set of allegations, are all essentially based on plaintiffs' contention that defendants orchestrated a scheme to trick plaintiffs into relinquishing control both over their company, SuperCaller, and over various intellectual property rights. SAC (Doc #141) at 3 ¶ 5. Plaintiff Darius Mostowfi, a California resident, is an electrical engineer and designer of telecommunications hardware. Id at 2 ¶ 1. Plaintiff Teng Lew Lim ("Lim") is a Malaysian citizen residing in California and is an entrepreneur. Id. Sometime in 2000, Lim started and invested money in Limcom, Inc, a California corporation. Id at 5 ¶ 16. Plaintiffs Fung Chee Lim and Teng Howe Lim, Lew Lim's uncle and brother, also invested in Limcom. Id at 2 ¶ 1, 5 ¶ 16. The Lims collectively owned about 90% of Limcom's outstanding shares, while Mostowfi owned the remaining 10%. Id at 5-6 ¶¶ 16, 17. Lim became Limcom's CEO and Mostowfi became CTO. Id at 5 ¶ 16.

Mostowfi and Lim collaborated at Limcom to develop and market Mostowfi's Voice-over-Internet Protocol (VOIP) technology, which allows voice telecommunication calls to be routed over the Internet. Id at 7 ¶ 18. Limcom then changed its name to SuperCaller and sought additional capital of about \$500,000. Id at 6 ¶ 19.

1 Defendants allegedly acted in concert with one another to  
2 usurp control over SuperCaller and SuperCaller's intellectual  
3 property rights to VOIP technology. Id at 3 ¶ 5. To accomplish  
4 this fraud, defendants Bernard R Kossar (also acting on behalf of  
5 defendant Millennium Partners), Paul R Arena and Anthony F Zalenski  
6 allegedly created a sham enterprise called Excel Capital, whose  
7 name they changed to I2 Phone when they identified SuperCaller as a  
8 "victim." Id at 3 ¶ 6. I2 Phone later became defendant I2  
9 Telecom. Id at 3 ¶ 7. Plaintiffs allege that I2 Phone operated  
10 with inadequate capital and that Kossar, Arena and Zalenski falsely  
11 represented to Mostowfi and Lim that I2 Phone provided  
12 telecommunication services using VOIP technology. Id at 3 ¶¶ 6, 7.

13 Plaintiffs allege that on June 6, 2002, I2 Phone entered  
14 into a Common Stock Purchase Agreement (CSPA) with SuperCaller to  
15 invest in SuperCaller's VOIP technology. Id at 8 ¶ 28. The CSPA  
16 is attached as Exhibit B to the SAC. Pursuant to this agreement,  
17 I2 Phone agreed to purchase \$1,300,000 of SuperCaller's shares in  
18 four monthly installments. Id at 9 ¶ 33. The agreement also  
19 provided that a designee of I2 Phone would receive one seat on  
20 SuperCaller's board of directors. Id at 9 ¶ 34. Defendant Arena  
21 filled that seat, but I2 Phone and its successor, I2 Telecom,  
22 allegedly never paid the amount agreed upon. Id at 9 ¶ 34, 11 ¶  
23 42, 12 ¶ 48.

24 Also on June 6, 2002, I2 Phone entered into a Development  
25 and Licensing Agreement (DLA) with SuperCaller. Id at 8 ¶ 28. The  
26 DLA is attached as Exhibit A to the SAC. "The DLA obligated I2  
27 Telecom to make royalty payments of hundreds of thousands of  
28 dollars every fiscal quarter, and minimum license royalties of \$1.5

1 million for the year 2003, \$2 million per year from the following  
2 year." Id at 9 ¶ 31.

3 In entering these agreements, I2 Telecom allegedly  
4 misrepresented its ability and intentions to consummate the  
5 transaction. Id at 12 ¶ 49. I2 Telecom's actions induced  
6 SuperCaller to expend its cash reserves in reliance of receiving  
7 nonexistent funds from I2 Telecom. Id at 13 ¶ 51.

8 Thereafter, I2 Telecom wrongfully obtained control of  
9 SuperCaller by forcing the resignation of Lim and Mostowfi. In  
10 teleconferences held on September 12, 2002, Arena and Zalenski  
11 agreed with Jon Roberts and Elliott D Light, attorneys at Roberts,  
12 Abokhair & Mardula LLP (RAM), "to invent an 'accounting' dispute  
13 with Lew Lim, because Kossar said it was the corporate crime du  
14 jour after Enron." Id at 15 ¶ 59. After the meeting, Roberts told  
15 Shauna Wertheim, another attorney at RAM, to draft documents for  
16 merging SuperCaller with I2 Telecom. Id. Arena called Jim  
17 Leimbach, an accountant at Stresser & Associates, who allegedly  
18 agreed to invent an accounting fraud. Id.

19 On September 16, 2002, Arena called a SuperCaller board  
20 meeting, falsely accused Lim of accounting fraud and threatened him  
21 with criminal prosecution, deportation and physical harm. Id at  
22 18-19 ¶¶ 66-71. That same day, Arena gave the I2 defendants'  
23 relatives and related entities millions of shares of stock. Id at  
24 19-20 ¶¶ 72, 73. The next day, Wertheim prepared minutes falsely  
25 stating that SuperCaller had decided to merge into I2 Telecom. Id  
26 at 20 ¶ 75. Arena again threatened Lim, forcing Lim to resign as  
27 director and CEO of SuperCaller. Id.

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Next, I2 defendants systematically removed Mostowfi from SuperCaller by wrongfully threatening to terminate his employment, prompting his resignation. Id at 22 ¶ 83. Defendants then collaborated with Roberts to acquire the rights to Mostowfi's intellectual property by threatening Mostowfi with baseless lawsuits if he did not assign his rights in the VOIP technology to I2 defendants without any compensation. Id at 21 ¶ 79. Mostowfi then signed over his rights to a provisional patent application. Id.

## II

Plaintiffs filed the original complaint in this action on December 22, 2003, listing eight named defendants and alleging twenty-two different causes of action. Doc #1. Roberts and RAM, who were the only attorney defendants at the time, moved to dismiss the claims against them pursuant to FRCP 12(b)(6) and 9(b). Doc #17. Roberts and RAM argued that plaintiffs' claims were based on allegations of fraud that were not pled with the requisite particularity mandated by FRCP 9(b). Id at 8-9.

By order dated May 27, 2004, the court granted Roberts and RAM's motion to dismiss. Doc #37. Noting that the requirements of FRCP 9(b) apply to all of plaintiffs' claims against Roberts and RAM, the court was unable to identify any specific statements made by these attorney defendants that satisfied FRCP 9(b)'s heightened pleading standards and found that plaintiffs' allegations were too general. Id at 25-27. Accordingly, the court dismissed the claims against Roberts and RAM, but granted plaintiffs leave to amend their complaint to: (1)

1 plead fraud against Roberts and RAM with the requisite degree of  
2 specificity or (2) replead any of the claims that do not require  
3 fraud as an essential element, if plaintiffs are able to assert a  
4 non-fraud basis for any of those claims. Id. The court also  
5 admonished plaintiffs "to file such an amended complaint and any  
6 future filings on paper with numbered lines, as required by Civ  
7 LR 3-4(c)(1)." Id at 28.

8 In addition to Roberts and RAM's motion to dismiss, I2  
9 and its affiliated individual defendants moved the court to dismiss  
10 plaintiffs' complaint pursuant to FRCP 12(b)(6). Doc #8. Because  
11 these defendants failed to demonstrate the essential elements that  
12 were missing from the complaint, the court denied their motion.  
13 Doc #37 at 19.

14 On July 20, 2004, plaintiffs filed a first amended  
15 complaint (FAC), adding eleven pages to the original complaint's  
16 sixty-eight pages. Doc #49. Although the FAC contained the same  
17 twenty-two causes of action, plaintiffs added fourteen new  
18 paragraphs below original paragraph seventy-five in an effort to  
19 plead their allegations of fraud against Roberts and RAM with  
20 sufficient particularity. Id at 21-28 ¶¶ 75a-75m. Roberts and RAM  
21 then filed a second motion to dismiss all claims directed at them,  
22 alleging that plaintiffs still failed to satisfy FRCP 9(b)'s  
23 particularity requirements and also did not adequately plead the  
24 elements of a RICO claim. Doc #65 at 14. The other defendants  
25 also filed a second motion to dismiss. Doc ##60, 61.

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1 In a 42-page order dated May 23, 2005, the court granted  
2 Roberts and RAM's motion to dismiss and granted in part the other  
3 defendants motion to dismiss. Doc #139. The court noted that  
4 "[p]laintiffs' failure to allege succinctly, coherently and  
5 nonredundantly the facts giving rise to their claims has occasioned  
6 the parties' confusing and often unhelpful briefing, considerable  
7 delay in resolving the parties' motions and now this lengthy  
8 order." Id at 41. Despite "serious reservations" about letting  
9 plaintiffs file yet another complaint, the court granted plaintiffs  
10 leave to amend — but with certain limitations that will be  
11 discussed below. Id at 40.

12 Although described as "only" 58 pages long, the SAC is  
13 even more convoluted than the previous two complaints. Plaintiffs  
14 have added 23 defendants and nine claims, for a total of 31  
15 defendants and 31 claims (defendants' names are listed below only  
16 if the same cause of action is alleged in different counts): (1)  
17 declaratory judgment under Cal Corp Code § 709 against defendants  
18 I2 Telecom, Arena, Kossar and Audrey L Braswell; (2) appraisal  
19 rights under Cal Corp Code § 1300; (3) declaratory judgment under  
20 Cal Corp Code § 709 against individual defendants affiliated with  
21 I2 Telecom and their relatives and related entities who received  
22 stock; (4) judgment to plaintiff Mostowfi for his patent  
23 applications; (5) copyright infringement and conspiracy to infringe  
24 copyrights, asserted by plaintiff Mostowfi; (6) obtaining property  
25 in violation of 18 USC § 1951 and attempts and conspiracies  
26 thereof; (7) conversion and attempt to convert property; (8) breach  
27 of contract against defendant I2 Telecom; (9) unjust  
28 enrichment/restitution; (10) trespass to chattels; (11) accounting;

(12) constructive trust; (13) interference with prospective economic advantage; (14) breach of duty of good faith and fair dealing; (15) civil conspiracy; (16) defamation; (17) breach of fiduciary duty, duty of loyalty and duty against self-dealing against defendant Arena; (18) usurpation of corporate opportunity; (19) breach of fiduciary duty, duty of loyalty and duty against self-dealing against defendants Roberts and RAM; (20) tortious interference with attorney-client relationship; (21) infliction of emotional distress, asserted by plaintiffs Mostowfi and Lim; (22) wrongful discharge in violation of public policy, asserted by plaintiff Mostowfi; (23) breach of fiduciary duty against Kossar, Braswell, Arena and I2 Telecom; (24) racketeering and racketeering conspiracy; (25) common law fraud and negligent misrepresentation (violation of Cal Civ Code §§ 1709, 1710) against defendants I2 Telecom, Arena, Kossar and Zalenski; (26) common law fraud and negligent misrepresentation (violation of Cal Civ Code §§ 1709, 1710) against I2 Telecom's attorneys (defendants RAM, Roberts, John Abokhair and Wertheim); (27) breach of contract against defendant RAM; (28) common law fraud and negligent misrepresentation (violation of Cal Civ Code §§ 1709, 1710) against I2 Telecom's accountants (defendants Leimbach and Stresser & Associates); (29) breach of fiduciary duty against Leimbach and Stresser & Associates; (30) violation of Cal Bus & Prof Code §§ 17200, 17500 and (31) professional negligence/legal malpractice against attorneys for SuperCaller (Jim Berg and the law firm of Reed Smith, LLP). Various defendants have either moved to dismiss these claims or moved to join in the motions to dismiss. Doc ##147, 148, 151, 156, 166.



1 A federal court's jurisdiction is limited, Northwest  
2 Airlines v Transport Workers Union, 451 US 77, 95 (1981), so the  
3 court turns first to whether there is federal jurisdiction.  
4 Happily, the court concludes that there is not.

5 Plaintiffs assert only three federal claims: copyright  
6 infringement, RICO violations and a private cause of action under  
7 the Hobbs Act. There are also allegations of a conspiracy, but  
8 conspiracy forms a basis for federal jurisdiction only if the  
9 conspiracy's aim is to violate a federal law.

10 Claim 4 seeks money for Mostowfi's patent applications,  
11 but this does not raise a federal question. The claim has nothing  
12 to do with federal patent law and in effect, merely seeks to  
13 rescind Mostowfi's assignment of his patent applications to  
14 defendants. "[B]ecause an action to rescind or cancel an  
15 assignment is a state-law based claim, absent diversity  
16 jurisdiction it is to a state court that plaintiffs must look in  
17 seeking a forfeiture of the license." Jim Arnold Corp v Hydrotech  
18 Systems, Inc, 109 F3d 1567, 1577 (Fed Cir 1997) (citation omitted).

19  
20 III

21 The court analyzes the three asserted federal claims in  
22 turn.

23 A

24 17 USC § 501(b) provides, "The legal or beneficial owner  
25 of an exclusive right under a copyright is entitled \* \* \* to  
26 institute an action for any infringement of that particular right  
27 committed while he or she is the owner of it." Mostowfi implicitly  
28 employs this provision in claim 5, asserting that "[I2 Telecom]

1 infringed and continues to infringe [Mostowfi's] exclusive right to  
2 his software, which is a criminal violation of 17 USC § 101 et  
3 seq." SAC at 30 ¶ 136.

4 But the facts alleged in the SAC do not support a  
5 Copyright Act claim. The allegations of the SAC are a bit confused  
6 and confusing but the agreements attached as exhibits make the  
7 failure to state a claim clear enough (and plaintiffs' pleading  
8 cannot assert a claim based on facts to the contrary, Sprewell v  
9 Golden State Warriors, 266 F3d 979, 988 (9th Cir 2001)). The  
10 Common Stock Purchase Agreement, Exhibit B to the SAC, provides  
11 that SuperCaller, not Mostowfi, owned the copyrights at issue here.  
12 CSPA § 2.10(a) states, "To the Company's knowledge (but without  
13 having conducted any special investigation or patent search), the  
14 Company owns or has licensed under enforceable licenses all right,  
15 title and interest in and to all of the Intellectual Property  
16 Rights (as hereinafter defined) reasonably necessary for the  
17 operation of the Company's business as presently conducted." Id,  
18 Ex B at 6. CSPA § 2.10(c)(iii) later defines intellectual property  
19 rights as including "copyrights (registered or unregistered) and  
20 copyrightable works and registrations and applications for  
21 registration thereof." Id, Ex B at 7. And the complaint indicates  
22 that the software at issue here was indeed necessary for  
23 SuperCaller's operation. Id at 33 ¶ 163 ("Plaintiffs have lost  
24 control of SuperCaller and its inventory, software, and they cannot  
25 for certain determine the true scope of the immense damage  
26 committed to their business by from [sic] defendants I2 Telecom and  
27 RAM \* \* \*").

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1 Plaintiffs argue that the court cannot decide that  
2 SuperCaller owns the copyright at this stage because "[i]mplicit in  
3 [this] argument \* \* \* is that the CSPA was a valid enforceable  
4 contract \* \* \* [which is] not an issue[] for a motion to dismiss."  
5 Doc #201 at 3. But plaintiffs themselves rely on the validity of  
6 the CSPA in connection with claim 8, their breach of contract claim  
7 against I2 Telecom. SAC at 32 ¶ 153 ("Defendant I2 Telecom  
8 breached the CSPA when it failed to pay the \$1,300,000 for the  
9 shares it contracted to buy."). And more fundamentally, although  
10 the SAC sometimes refers to the software as "Mostowfi's software,"  
11 the SAC also refers to the software as belonging to SuperCaller. E  
12 g, id at 3 ¶ 5 ("[Defendants] orchestrated a scheme with other  
13 intermediaries to deceive plaintiffs into relinquishing control of  
14 their company, SuperCaller Community, Inc, its bank accounts, and  
15 intellectual property, to wit, software \* \* \*." (emphasis added)).

16 As SuperCaller, not Mostowfi, owned the copyrighted  
17 software, Mostowfi cannot sue for copyright infringement. See  
18 Silvers v Sony Pictures Entertainment, Inc, 402 F3d 881, 885 (9th  
19 Cir 2005) ("[U]nder traditional principles of statutory  
20 interpretation, Congress' explicit listing of who may sue for  
21 copyright infringement should be understood as an exclusion of  
22 others from suing for infringement." (emphasis omitted)).

23 The SAC also indicates that Mostowfi was an employee for  
24 hire whose work was owned by SuperCaller. 17 USC § 201(b)  
25 provides, "In the case of a work made for hire, the employer or  
26 other person for whom the work was prepared is considered the  
27 author for purposes of this title, and, unless the parties have  
28 expressly agreed otherwise in a written instrument signed by them,

owns all of the rights comprised in the copyright." 17 USC § 101 defines a "work made for hire" as including "a work prepared by an employee within the scope of his or her employment."

Here, the complaint avers that Mostowfi was an employee of Limcom and SuperCaller. E g, SAC at 5 ¶ 16 ("Mostowfi became the Chief Technology Officer [at Limcom.]"); id at 46 ¶ 255 ("SuperCaller/I2 Telecom discharged Mostowfi when he complained that the company's failure to meet its payroll obligations was in violation of the California Labor Code, and because he alerted other employees of their rights, to wit, the right to receive wages timely according to the law." (emphasis added)). The complaint also indicates that Mostowfi invented the VOIP devices and the accompanying software at issue here while employed at Limcom and/or SuperCaller, and that writing the software was within the scope of his employment as Chief Technical Officer. Id at 6 ¶ 17 ("Limcom, Inc decided to develop and market telecommunications devices that use [VOIP]. Towards that end, Mostowfi designed a device, which he named Media Gateway (MG-1), which would enable cheap telephone calls over the Internet."); id at 30 ¶ 136 ("[Defendants] reproduced, distributed, stored and sold thousands of SuperCaller devices containing Mostowfi's software code \* \* \*."). Hence, these facts indicate that the work-for-hire exception squarely applies.

Accordingly, it is plain that SuperCaller, not Mostowfi, owned the software copyright. Mostowfi's copyright claim fails as a matter of law and claim 5 is DISMISSED.

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B

Relying in part on FRCP 9(b), defendants contend that claim 24 for racketeering and racketeering conspiracy should be dismissed under FRCP 12(b)(6). To state a claim under RICO, 18 USC § 1962(c), plaintiffs must allege: (1) the conduct; (2) of an enterprise; (3) through a pattern of (4) racketeering activity. Forsyth v Humana, Inc, 114 F3d 1467, 1481 (9th Cir 1997).

Defendants argue that plaintiffs have failed to plead the underlying criminal acts of racketeering activity with sufficient particularity under FRCP 9(b). Doc ##147 at 20-21; 148 at 5-6. "Rule 9(b)'s requirement that 'in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity' applies to civil RICO fraud claims." Edwards v Marin Park, Inc, 356 F3d 1058, 1065-66 (9th Cir 2004) (quoting Alan Neuman Productions, Inc v Albright, 862 F2d 1388, 1392 (9th Cir 1989)). And "Rule 9(b) requires that the pleader state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation." Moore v Kayport Package Express, Inc, 885 F2d 531, 541 (9th Cir 1989).

In the order dismissing the racketeering claims in the FAC, the court admonished plaintiffs "to heed the court's instructions to plead fraudulent statements and omission with particularity." Doc #139 at 40-41. But as with the FAC, plaintiffs' SAC fails to plead any predicate acts with enough particularity. In the section entitled "Predicate Acts" under claim 24 (SAC at 48 ¶ 273 – 50 ¶ 284), many of the alleged predicate acts are just bald assertions that defendants violated

1 federal statutes. E g, id at 50 ¶ 278 ("They have violated the  
2 Hobbs Act (18 USC § 1951) by using threats of deportation, jail,  
3 criminal prosecution and financial ruin."); id at 50 ¶ 279 ("They  
4 have violated the Travel Act (18 USC § 1952) by traveling across  
5 state lines to commit extortion."). And the other alleged  
6 predicate acts are simply general statements about actions that  
7 defendants allegedly committed. E g, id at 48 ¶ 273(a) (alleging a  
8 predicate act "for false statement that I2 Telecom was not formed  
9 for the purpose of investing in SuperCaller.").

10 This problem is further exacerbated because plaintiffs  
11 simply lump together the defendants in claim 24 and do not attempt  
12 to describe the particular acts or omissions that each defendant  
13 committed. Compare Vicom, Inc v Harbridge Merchant Servs, Inc, 20  
14 F3d 771, 778 (7th Cir 1994) ("[I]n a case involving multiple  
15 defendants, such as the one before us, 'the complaint should inform  
16 each defendant of the nature of his alleged participation in the  
17 fraud.' We previously have rejected complaints that have 'lumped  
18 together' multiple defendants." (first quoting DiVittorio v  
19 Equidyne Extractive Industries, Inc, 822 F2d 1242, 1247 (2d Cir  
20 1987)) (citations omitted)).

21 In addition, none of the predicate acts include any  
22 specific dates, except for the act described in SAC at 48 ¶ 273, 49  
23 ¶ 273(k): "Beginning February 2002, and continuing to the present,  
24 I2 Telecom, RAM, Stresser and the individual racketeers have  
25 violated numerous predicate statutes: \* \* \* for concealing that  
26 Roberts had an actual conflict of interest between I2 Telecom and  
27 SuperCaller on or about September 11, 2002." But this statement,  
28 like all the others, fails to attribute specific conduct to each

1 defendant and does not specify the place of the alleged fraud.

2           Moreover, although plaintiffs were specifically  
3 instructed in the court's previous order that "the causes of action  
4 must provide relevant citations (not restatements) to the  
5 underlying factual allegations set forth in the general body of the  
6 complaint," Doc #139 at 41, claim 24 restates and realleges the  
7 entire facts section (¶¶ 1-104) rather than specifically pointing  
8 to the relevant factual allegations. It is an exercise in futility  
9 to determine which facts, if any, in that tedious section add the  
10 particular details sufficient to describe the alleged fraudulent  
11 acts. For example, plaintiffs allege a predicate act of  
12 "concealing from SuperCaller shareholders that Kossar and Arena had  
13 given themselves and families [sic] watered down shares of I2  
14 Telecom to the detriment of SuperCaller shares \* \* \*." SAC at 49 ¶  
15 273(p). But after combing through the complaint, the court is  
16 unable to discern which defendants partook in this concealment and  
17 when, where and how this alleged concealment occurred. And in any  
18 event, this court does not have to hunt down the supporting facts,  
19 if any exist, that are buried in the unnecessarily voluminous SAC.  
20 Cf United States v Dunkel, 927 F2d 955, 956 (7th Cir 1991) ("Judges  
21 are not like pigs, hunting for truffles buried in briefs.").

22           Accordingly, the court finds that plaintiffs have failed  
23 to allege predicate acts of racketeering activity with the  
24 specificity required by FRCP 9(b). Accordingly, claim 24 is  
25 DISMISSED.

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C

Although not specifically stated as a ground for jurisdiction by plaintiffs in the SAC, the court examines whether claim 6, which is brought under 18 USC § 1951, provides a basis for federal question jurisdiction. 18 USC § 1951, which is popularly known as the Hobbs Act, is a criminal statute that states in relevant part:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

In their opposition, plaintiffs allege that the court should imply a private right of action under this provision via Cort v Ash, 422 US 66, 78 (1975). Doc #201 at 4-5; see also Opera Plaza Residential Parcel Homeowners Association v Hoang, 376 F3d 831, 834-35 (9th Cir 2004).

But "[the Supreme] Court has rarely implied a private right of action under a criminal statute, and where it has done so 'there was at least a statutory basis for inferring that a civil cause of action of some sort lay in favor of someone.'" Chrysler Corp v Brown, 441 US 281, 316 (1979) (quoting Cort, 422 US at 79). Plaintiffs have not cited, and this court has not found, any cases in which the Hobbs Act formed the basis for an implied private right of action. Although the Ninth Circuit apparently has not addressed this issue in a published opinion, other courts have uniformly declined to infer a private right of action under the Hobbs Act. E g, Wisdom v First Midwest Bank, 167 F3d 402, 408-09



(8th Cir 1999) ("We agree that neither the statutory language of 18 USC § 1951 nor its legislative history reflect an intent by Congress to create a private right of action."); Neal v Carron, 2006 WL 522361, 9 (WD Ky, Feb 28, 2006) ("[T]he Hobbs Act is a criminal statute, which does not provide for a private cause of action."); Campbell v Austin Air Systems, Ltd, 2005 WL 2405997, 8 (WDNY, Sept 29, 2005) ("[F]ederal courts have consistently found that the Hobbs Act does not support a private cause of action."); Bajorat v Columbia-Breckenridge Development Corp, 944 F Supp 1371, 1377-78 (ND Ill 1996); John's Insulation, Inc v Siska Const Co, Inc, 774 F Supp 156, 163 (SDNY 1991) ("There is no implied private cause of action under the Hobbs Act."); Peterson v Philadelphia Stock Exchange, 717 F Supp 332, 336 (ED Pa 1989) ("The Hobbs Act contains no language which suggests it can provide civil relief. Moreover, this court cannot find congressional concern for civil relief in the legislative history."); Creech v Federal Land Bank of Wichita, 647 F Supp 1097, 1099 (D Colo 1986). Accordingly, the court concludes that 18 USC § 1951 does not implicitly create a private right of action and does not form a basis for federal question jurisdiction. Plaintiffs' claim 6 is therefore DISMISSED.

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## IV

## A

In their opposition, plaintiffs move for leave to amend "[i]n case the court finds the required level of detail is not there with respect to any cause of action." Doc #201 at 23. Plaintiffs also state that they "hope and believe that they have not frittered away the generous grant of leave to amend." Id at 23.

FRCP 15(a) provides that a party no longer permitted to amend its pleadings "as a matter of course \* \* \* may amend the party's pleading only by leave of court or by written consent of the adverse party." "In the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc — the leave sought should, as the rules require, be 'freely given.'" Foman v Davis, 371 US 178, 182 (1962) (quoting FRCP 15(a)). The decision to grant or deny leave to amend rests with the discretion of the court. See Swanson v United States Forest Service, 87 F3d 339, 343 (9th Cir 1996).

The court declines to grant leave to amend here. First, in the court's May 23, 2005, order dismissing claims in the FAC, the court warned plaintiffs that "No further amendment will be permitted except for good cause shown." Doc #139 at 41. Apart from reciting the general rules governing amendments, plaintiffs have not provided any reason why leave to amend should be granted in this particular case. Doc #201 at 23-24.



1 In its May 23, 2005, order, the court stated:

2 In view of the unfocused character of the first two  
3 complaints, the court has serious reservations about  
4 granting plaintiffs yet another opportunity to amend the  
5 complaint. But with hope overcoming experience, the  
6 court GRANTS plaintiffs' request for leave to amend the  
7 FAC. \* \* \*

8 [S]hould plaintiffs elect to file an amended complaint,  
9 plaintiffs are ordered to amend under the following  
10 constraints: (1) All factual allegations must be set  
11 forth in the general body of the complaint; (2) the  
12 general body must be no greater than twenty-five pages  
13 long and (3) the causes of action must provide relevant  
14 citations (not restatements) to the underlying factual  
15 allegations set forth in the general body of the  
16 complaint.

17 Doc #139 at 40-41. Sadly, experience has finally vanquished hope,  
18 as plaintiffs' counsel clearly did not take this order to heart.

19 As a preliminary matter, the latest complaint is once  
20 again rife with unnecessary evidentiary detail. Plaintiffs  
21 describe their position:

22 [Defendants] first say that Plaintiffs ignored FRCP  
23 8 when they gave too many pages of details. Then  
24 they argue that the complaint sounded or grounded in  
25 fraud, and did not meet the particularity  
26 requirements of Rule 9(b). They hope to have the  
27 case dismissed somehow, and ask the court to pick a  
28 rule.

Doc #201 at 17. But as the court explained in its previous order:

Plaintiffs are also admonished to heed the court's  
instructions to plead fraudulent statements and  
omissions with particularity. Particularity in this  
context does not mean rococo evidentiary detail. It  
does mean clear and concise allegations of facts  
that constitute elements of the claim in question.  
Economical pleading is more likely to satisfy the  
particularity requirement than many and verbose  
allegations.

Doc #139 at 40-41. To summarize, it is not inconsistent to have a  
complaint that is both "short and plain" and one that pleads the  
elements of fraud with particularity. See In re Westinghouse

1 Securities Litigation, 90 F3d 696, 703 (3d Cir 1996) ("[T]he  
2 particularity demands of pleading fraud under Rule 9(b) in no way  
3 negate the commands of Rule 8." (Alito, J) (quoting Vicom, 20 F3d  
4 at 776) (internal quotation marks omitted)). The latest complaint,  
5 like the previous two, fails to meet either of these requirements.  
6 Plaintiffs' counsel put it best when, in his opposition, he appears  
7 to describe his own complaint: "[I]t is a train wreck." Doc #201  
8 at 25.

9           Additionally, plaintiffs' SAC violates each of the three  
10 specific directives set forth in the May 23, 2005, order. First,  
11 as noted previously, many of plaintiffs' claims do not "provide  
12 relevant citations \* \* \* to the underlying factual allegations set  
13 forth in the general body of the complaint."

14           Next, violating the directive that "[a]ll factual  
15 allegations must be set forth in the general body of the  
16 complaint," plaintiffs included factual allegations throughout the  
17 SAC. See, e g, SAC at 36 ¶ 185 (states in claim 16, "On December  
18 11, 2002, Doug Bender, the 'general manager' of I2 Telecom, told  
19 John Cooney, an employee of Supercaller, that Lew Lim and Darius  
20 were the 'biggest crooks [he] had ever met' in his 'twenty years in  
21 the Silicon Valley.'" (alteration in original)); id at 57 ¶ 356  
22 (states in claim 31, "Berg failed to challenge the 0.0023 ratio  
23 which I2 Telecom used to decimate SuperCaller shares."). These  
24 allegations, if added to the general body, would greatly expand its  
25 length.

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Which brings the court to the final contravened directive: "[T]he general body of the complaint must be no greater than twenty-five pages long." In addition to including factual allegations outside of the 25-page general body, plaintiffs also, in essence, exceeded the 25-page limit by increasing the number of lines per page. In support of this maneuver, plaintiffs' counsel explained, "Plaintiffs have always used a 1.5 line-spacing which results in 31 lines per 8.5" x 11" page." Doc #201 at 25 (emphasis in original). At oral argument, plaintiffs' counsel also indicated that he used the 31-line paper "to save some trees." The court is, to say the least, puzzled by these arguments. Plaintiffs' counsel is admitting that he consistently violates Civ L R 3-4(c)(2), because his filings are neither double-spaced nor 28 lines or less per page, as required by that rule. (Indeed, the opposition in which plaintiffs' counsel stated its position also violates this rule. See Doc #201.) This persistent intransigence is particularly noteworthy given that the court already admonished plaintiffs not to violate a different provision of Civ L R 3-4(c) in the court's May 27, 2004, order dismissing the original complaint. Doc #37 at 28 ("Plaintiffs are also ORDERED to file such an amended complaint and any future filings on paper with numbered lines, as required by Civ LR 3-4(c)(1)."). Moreover, because the FAC (Doc #49) has 29 lines per page but the SAC (Doc #141) has 31 lines per page (e g, compare FAC at 4 with SAC at 4), this alteration suggests that plaintiffs' counsel deliberately increased the lines per page so that plaintiffs' factual allegations would fit within the 25-page limit.

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1           For these reasons, plaintiffs' motion for leave to amend  
2 (Doc #201) is DENIED. And in light of plaintiffs' failure to  
3 comply both with this court's May 23, 2005, order and the local  
4 rules, the court concludes that DISMISSAL WITH PREJUDICE pursuant  
5 to FRCP 41(b) is warranted. The court will limit that dismissal to  
6 the federal claims as they are the only claims that the court has  
7 analyzed and is satisfied are baseless under federal law.

8           Additionally, because none of plaintiffs' federal claims  
9 survive, the court declines to exercise supplemental jurisdiction  
10 over the remaining state law claims. See 28 USC § 1367(c)(3) ("The  
11 district courts may decline to exercise supplemental jurisdiction  
12 [if] the district court has dismissed all claims over which it has  
13 original jurisdiction \* \* \*"). Accordingly, those claims are  
14 DISMISSED.

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In sum, the court GRANTS defendants' motions to dismiss and motions for joinder (Doc ##147, 148, 151, 156, 166) and DENIES plaintiffs' motion for leave to amend (Doc #201). The court also DENIES AS MOOT the various motions for default judgment and motions to set aside default (Doc ##174, 181, 193). Plaintiffs' federal claims are DISMISSED WITH PREJUDICE; plaintiffs' state law claims are DISMISSED. The clerk is DIRECTED to close the file and TERMINATE all pending motions.

IT IS SO ORDERED.



VAUGHN R WALKER

United States District Chief Judge